

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

JACKY DEE SUTTON

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CRIMINAL NO. 6:98-CR-60-001

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On December 19, 2007, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Jacky Dee Sutton. The government was represented by Alan Jackson, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Assistant Federal Public Defender Ken Hawk.

Defendant originally pleaded guilty to the offense of Use and Carrying a Firearm During a Crime of Violence, a Class C felony. The offense carried a required imprisonment term of 120 months. On March 8, 1999, U.S. District Judge John Hannah, Jr. of the Eastern District of Texas sentenced Defendant to 120 months subject to the standard conditions of release, plus special conditions to include mandatory drug testing, drug treatment, and restitution. On January 2, 2007, Defendant completed his period of imprisonment and began his term of supervised release.

Under the terms of the supervised release, Defendant was to report to the probation officer as directed by the Court or probation officer, and was to submit a truthful and complete written report within the first five days of each month. Also, the Defendant was to notify the probation officer ten days prior to any change of residence or employment. The terms also called for Defendant to refrain from any unlawful use of a controlled substance, and required Defendant to submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter,

as directed by the probation officer. Finally, Defendant was required to participate in a program of testing and treatment for drug abuse, as directed by the probation officer until such time as the Defendant was released. In its petition, the government alleges that Defendant violated his conditions of supervised release by failing to provide a monthly report form for the months of May and June 2007; failed to notify of change of residence on or before July 13, 2007; submitting a urine specimen that tested positive for marijuana on April 21, 2007; submitting a urine specimen that testing positive for methamphetamine on May 12, 2007; and failing to attend scheduled counseling session on June 11, 2007.

If the Court finds by a preponderance of the evidence that Defendant committed these violations, a statutory sentence of no more than two years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Section 7B1.1(b) of the Sentencing Guidelines indicates that when there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade. Pursuant to Section 7B1.1(a) of the Sentencing Guidelines, violating a condition of supervision by possessing amphetamine/methamphetamine would be a Grade B violation, for which the Court shall revoke probation or supervised release. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of VI, the Guideline imprisonment range for a Grade B violation is 21 to 27 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the violations. In exchange, the government agreed to recommend a sentence of twenty-one months with no term of supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant

Jacky Dee Sutton be committed to the custody of the Bureau of Prisons to be imprisoned for a term of 21 months with no supervised release to follow.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael H. Schneider for adoption immediately upon issuance.

So ORDERED and SIGNED this 9th day of January, 2008.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE